

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DECKER CONSTRUCTION CO.,	:	
	:	
Plaintiff,	:	Case No. 2:18-cv-00727
	:	
-vs-	:	JUDGE ALGENON L. MARBLEY
	:	
WESEX CORPORATION, et al.,	:	MAGISTRATE JUDGE ELIZABETH
	:	P. DEVERS
Defendants.	:	

MOTION FOR DEFAULT JUDGMENT
AS AGAINST WESEX CORPORATION

Plaintiff Decker Construction Company (“Decker”) moves this Court for a judgment by default against Defendant Wesex Corporation (“Wesex”). Decker filed its Complaint against Decker in the Licking County Court of Common Pleas on June 23, 2018. On July 25, 2018, Wesex, in conjunction with Co-Defendant CCL Label, Inc., removed the case to this Court.

Wesex did not file an Answer or other responsive pleading, and the Clerk of Court entered a default on August 20, 2018. Wesex has taken no action in this proceeding since default was entered.

Wherefore, Plaintiff moves that this Court enter a judgment that Wesex owes Plaintiff the amount of \$143,384.00, plus interest and attorney’s fees pursuant to Ohio’s Prompt Pay Act. This Motion is supported by the attached Memorandum in Support, the Affidavit of Carl W. Scheiderer in support of this Motion (attached as **Exhibit A**), and a Proposed Entry (attached as **Exhibit B**).

Respectfully submitted,

/s/ Daniel O. Culicover

Daniel O. Culicover (0092575)

Patrick A. Devine (0022919)

ICE MILLER LLP

250 West Street

Columbus, OH 43215

Phone: (614) 462-2700

Fax: (614) 462-5135

E-mail: patrick.devine@icemiller.com

E-mail: daniel.culicover@icemiller.com

Attorneys for Plaintiff

Decker Construction Co.

MEMORANDUM IN SUPPORT

I. FACTS

This is a breach of contract action, and an action under Ohio's Prompt Pay Act. Plaintiff Decker Construction Company ("Decker") entered into a subcontract with Defendant Wesex Corporation on March 31, 2017 (the "Subcontract"). [Compl. ¶ 5.] Decker provided Wesex with materials and labor under the Subcontract. [*Id.* ¶ 6.] In total, Decker provided Wesex with \$143,384.00 in materials and labor. [*Id.* ¶ 14.] Wesex has not paid Decker for any of portion of the goods or services Decker supplied. [*Id.*] CCL Label, who owns the project, alleges it paid Wesex for the materials and work.

II. PROCEDURAL BACKGROUND

On June 23, 2018, Decker filed a Complaint against Wesex in the Licking County Court of Common Pleas. The Complaint sought damages of \$143,384.00 against Wesex pursuant to Wesex's breach of contract, and/or violation of Ohio's Prompt Pay Act, plus reasonable costs and fees.

Wesex was served with a summons and a copy of Plaintiff's Complaint on June 26, 2018. Wesex, along with co-Defendant CCL Label Inc. ("CCL"), removed the case to this Court on July 25, 2018.

The time within which Wesex could plead in or otherwise defend this removed action as specified in Federal Rule of Civil Procedure 81(c)(2) has expired. In particular, more than 21 days have elapsed since the date on which Wesex was served with a copy of the Complaint and a copy of the summons. And more than seven days have elapsed since Wesex and CCL filed their notice of removal.

Wesex has failed to answer or otherwise defend as to Decker's Complaint, and has failed to serve a copy of any answer or other defense that it might have upon the attorneys of record for

Plaintiff. Accordingly, on August 20, 2018, the Clerk of Courts issued an Entry of Default as to Wesex. [Doc. 14.]

III. LAW AND ANALYSIS

Default and default judgment are governed by Federal Rule of Civil Procedure 55. To obtain a default judgment, a party must first be subject to an entry of default by the Clerk of Courts. *See* Fed. R. Civ. P. 55(a). After the entry of default, the party seeking judgment must file a motion for default judgment with the Court to determine a specific amount of damages. *See* Fed. R. Civ. P. 55(b)(2). Default judgment is appropriate at this time because the Clerk of Courts issued an Entry of Default as to Wesex on August 20, 2018. [Doc. 14.]

After the clerk enters of default pursuant to Rule 55(a) and the party's application for default under Rule 55(b), "the defendants are considered to have admitted all of the well-pleaded allegations in the complaint." *J & J Sports Productions, Inc. v. Smith*, S.D. Ohio No. 2:13-CV-915, 2014 WL 558782, *1 (Feb. 13, 2014). The entry of default does not take the complaint's damages allegations as true; thus, the plaintiff must prove the amount of damages. *Id.* (citing *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110 (6th Cir. 1995)). However, the Court does not need to hold an evidentiary hearing if "damages are contained in documentary evidence or detailed affidavits and can be ascertained on the record before the court." *Id.*

As set forth in the Affidavit of Carl W. Scheiderer, Wesex owes Decker \$143,384.00 for goods and services rendered to Wesex, which Wesex did not pay for. [*See* Scheiderer Aff., **Exhibit A** ¶ 3.] As listed in the below table, Decker submitted five Applications and Certifications for Payment to Wesex. [Ex. A ¶ 3.]

Application for Payment Number	Invoice No.	Date	Amount
Application No. 1	84574	6/25/17	\$99,810.00
Application No. 2	84740	7/17/17	\$15,811.20
Application No. 3	86122	11/17/17	\$1,554.30
Application No. 4	86688	12/31/17	\$11,870.10
Application No. 5	86689	12/31/17	\$14,338.40
<u>Total</u>			<u>\$143,384.00</u>

As of this date, Wesex has not paid Decker for any of Decker's services. [Ex. A ¶ 4.]

IV. CONCLUSION

For these reasons, Decker respectfully requests this Court to issue default judgment against Wesex in the amount of \$143,384.00, plus interest, and attorney's fees under Ohio's Prompt Pay Act.

Respectfully submitted,

/s/ Daniel O. Culicover

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Patrick A. Devine (0022919)

ICE MILLER LLP

250 West Street

Columbus, OH 43215

Phone: (614) 462-2700

Fax: (614) 462-5135

E-mail: patrick.devine@icemiller.com

E-mail: daniel.culicover@icemiller.com

Attorneys for Plaintiff

Decker Construction Co.

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Daniel O. Culicover

Daniel O. Culicover, Esq.